

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Amendment of the Over-The-  
Air Reception Devices Rule to  
Clarify the Extent to which Local  
Governments Can Regulate Non-Exclusive  
Use Areas

**FCC Docket No. MB-12-121**

By W. Lee McVey, P.E.

To: The Commission

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**REPLY TO THE REPLY COMMENTS OF THE CITY OF PHILADELPHIA**

The following is my Reply to the Reply Comments of the City of Philadelphia (City) in the above captioned proceeding.

1. The City claims that somehow I misquoted 47CFR§25.104, in that I errantly referenced a section that applies only to commercial and industrial areas.<sup>1</sup> While the

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<sup>1</sup> Reply Comments of the City of Philadelphia, page 2.

section does apply to such areas, it was cited to show that public health and safety concerns are and should be *paramount in regulation*; whereas often-flippant, arbitrary aesthetic constraints can be used as a means to make over the air or satellite television much too difficult and costly for subscribers to consider. Certainly a motivation for the instant proceeding.

2. The City is apparently concerned that changes in Commission enforcement would somehow deny a respondent the right to be heard.<sup>2</sup> The process of Commission regulatory enforcement of other parts of Title 47 with respect to non-licensees involves issuance of formal citations by its Enforcement Bureau. And, the citation process includes solicitation of responses from those so cited. Whether or not additional enforcement action is necessary is dependent to a great degree upon the content of such replies from respondents.

3. As the City notes, the Holmes Beach Code of Ordinances (HBCO) excludes antennas preempted by the Telecommunications Act of 1996 from being defined as what it calls telecommunications equipment.<sup>3</sup> And, it defines satellite dish antennas in residential areas as dish antennas having diameters greater than one meter.<sup>4</sup> However, nowhere in the *Purpose and Intent* of its entire Article XI, entitled *Telecommunications Towers, Antennas,*

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<sup>2</sup> *Id.*, page 2.

<sup>3</sup> *Id.*, page 2, Ref. 6.

<sup>4</sup> City of Holmes Beach, *Code of Ordinances*, Article 11.2.E

*and Facilities Regulations*, does it limit coverage of its Article XI to only what it defines as telecommunications equipment.<sup>5</sup>

4. And, nowhere in its section entitled *Antennas*, does it exclude from regulation, any antennas outside its definition of telecommunications equipment.<sup>6</sup> So, it follows that an antenna less than one meter in diameter in a residential area is still an antenna, although not a satellite antenna or telecommunications equipment according to the HBCO definition noted above. And, an over the air, broadcast TV antenna is still an antenna, even though not defined by HBCO as telecommunications equipment. Therefore, its *Antennas* paragraph applies to all antennas, regardless of whether OTARD-protected or not. It makes no specific exception for OTARD antennas from the provisions that prohibit any antenna installations on residential structures.<sup>7</sup> Or, exception from another section that requires all antennas to be painted.<sup>8</sup> Something that would almost certainly render an over the air TV antenna useless, if it had to be painted before its installation by a consumer.

5. If the above were not enough confusion and inconsistency, in yet another section of Article XI entitled *Accessory Antennas*, HBCO demonstrates it still intends to constrict OTARD-protected antennas by restricting over the air TV antennas to not more than 10

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<sup>5</sup> *Id.*, 11.1

<sup>6</sup> *Id.*, 11.4

<sup>7</sup> *Id.*, 11.4.A.3

<sup>8</sup> *Id.*, 11.B.1.b

feet above structure roofline without a special exception use permit.<sup>9</sup> (Even though its earlier definition of what it terms to be *Accessory Antennas* does not include TV antennas).<sup>10</sup>

6. The net result of the convoluted language of HBCO Article XI is the chilling of interest in any alternatives to cable or telecom provider television media within the City of Holmes Beach, Florida. Making a practical, effective mini-dish or over the air TV antenna installation a nightmare. Precisely *why* the HBCO Article XI and its gimmicked content was used as an example of contempt for the OTARD Rule by local governments in my Comments and Reply to the City of Philadelphia in this proceeding; and why a revision to the OTARD Rule is sorely needed to improve Commission enforcement remedies.

Respectfully Submitted this 25<sup>th</sup> day of June, 2012

A handwritten signature in blue ink, appearing to read "W. Lee McVey".

W. Lee McVey, P.E.  
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<sup>9</sup> *Id.*, 11.8.A.3

<sup>10</sup> *Id.*, 11.2.A

Certification/Testament of Service

This is to attest that on the 25th of June, 2012, the undersigned placed a true, signed copy of my Reply to Reply Comments of the City of Philadelphia in the United States Mail, First Class Postage Paid, addressed to the location given in the Docket for the author as follows:

Shelley R. Smith, Esquire  
City Solicitor  
City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102-1595

A handwritten signature in blue ink, appearing to read "W. Lee McVey", is written over a light blue rectangular background.

By \_\_\_\_\_

W. Lee McVey, P.E.